

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1515 of 1983

Hon'ble MR.JUSTICE Y.B.BHATT

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAFIKBHAI HUSAINBHAI CHAUHAN

Versus

SONI GHANSHYAMBHAI POPATLAL

Appearance:

MR UM SHASTRI for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 04/07/2000

ORAL JUDGEMENT

1. This is a revision application under section 29(2) of the Bombay Rent Act at the instance of the original tenant, who was sued by the respondent plaintiff-landlord for a decree of eviction under the provisions of the Bombay Rent Act.

2. The respondent-landlord had sued the tenant for a

decree for eviction on the ground of arrears of rent of more than six months. According to the landlord, the property was leased out to the tenant at a contractual rent of Rs.40/- per month, that the month of tenancy starts from 1st and ends on the last date of each English calendar month and that the rent was to be paid at the end of each month. The defendant was in arrears of rent from 13th May 1977 upto 12th January 1978 i.e. for a period of 8 months. The landlord, therefore, served the tenant with the statutory notice demanding the arrears of rent and vacant possession of the suit premises, but the defendant neither gave any reply to the suit notice nor handed over vacant possession and hence the landlord was obliged to file the suit.

3. The defendant filed his written statement at Exh.22 and contended therein that the contractual rent was excessive and could not be the standard rent in respect of the suit premises. The trial court, after appreciating the evidence on record, came to the conclusion that the standard rent of the suit premises would be Rs.30/- per month, that the suit notice was not legal, and that therefore the landlord would not be entitled to a decree for eviction. Consequently the trial court dismissed the suit of the landlord.

4. The landlord preferred an appeal under the provisions of section 29(1) of the Act, which came to be allowed. The lower appellate court, after appreciating the evidence on record, and on a detailed analysis of the logic and reasoning adopted by the trial court, came to the conclusion that the trial court was in error in holding that the suit notice was not legal and on the facts otherwise admitted on the record of the case, the lower appellate court found that the tenant was in arrears of rent for more than six months and that therefore, the landlord would be entitled to a decree for eviction under the provisions of section 12(3)(a) of the Bombay Rent Act. Hence the present revision by the tenant.

5. Only a few salient features require to be noted for the purpose of the present revision. It may be noted at this stage that the lower appellate court interfered with the finding of the trial court fixing the standard rent at Rs.30/- per month, and determined the standard rent at Rs.40/- per month. This is a finding of fact recorded by the lower appellate court on the basis of the evidentiary material on record and does not require to be interfered with.

6. The lower appellate court, after appreciating the evidentiary material on record, recorded a finding of fact that the suit premises was let out for the first time to the defendant-tenant at a contractual rent of Rs.40/- per month, and that the defendant had failed to establish that there was any previous letting to any person whatsoever at a rent of less than Rs.40/- per month. The lower appellate court further found on the basis of other evidentiary material on record that the contractual rent of Rs.40/- per month cannot be said to be excessive.

7. The lower appellate court found on the facts of the case that the trial court had seriously misread the documentary evidence on record, particularly at Exh.44 and 47. The lower appellate court found, and in my opinion rightly so, that Exh.44 and Exh.47 are not two different receipts for different sums of money (receipts issued by the landlord), but Exh.44 was a rough slip in the nature of a kuchha receipt, whereas Exh.47 is a pucca receipt which was issued for the receipt of rent for the identical period contemplated by Exh.44. This conclusion has been drawn also on the basis of the oral evidence of the defendant himself, who had admitted that, at the time when he had paid the rent under Exh.45, the rent was due from the month of May onwards.

8. The lower appellate court found that the plaintiff has examined Rasilaben Popatlal Soni (mother of the plaintiff-landlord) at Exh.50, wherein it is established that the defendant was in arrears of rent from 13th May 1977 to 12th January 1978, which was a period of 8 months, and it was in respect of this period (the arrears being Rs.320/-) that the tenant was served with a statutory notice (Exh.48), which was received by the tenant at Exh.49.

9. It requires to be noted that there is no dispute that the suit notice was served upon the defendant, and that the said notice was also received by him. This witness (Rasilaben Popatlal Soni (mother of the plaintiff-landlord) emphatically denies the version of the tenant that the tenant had come with another person to tender the rent then due (Rs.320/-) and that she refused to accept it.

10. In this context it is relevant to examine the contention of the defendant taken in the written statement that two days after receipt of the statutory notice he had gone with one Jehangirbhai to tender the amount to the landlord and that they had taken with them

Rs.320/-. This assertion itself indicates that the defendant had believed that the demand for Rs.320/- being the arrears of rent for 8 months was due and payable, as asserted in the suit notice. This, therefore, completely sets at naught the defence of the tenant that on the date of the suit notice the arrears was only in respect of four months. If this was the genuine belief of the tenant, he would have approached the landlord with an amount of Rs.160/- being the rent for four months.

11. In the ultimate conclusion the lower court was justified in discarding the oral assertion of the tenant that he had gone to pay to the landlord the rent demanded in the statutory notice, which the landlord had refused.

12. In view of the aforesaid findings it becomes obvious that on the date of the statutory notice the tenant was in arrears of rent of more than six months, that inspite of receipt of the suit notice he had neither paid nor deposited in court the arrears of rent, and had not raised any dispute as to the standard rent within a period of 30 days from the date of receipt of the statutory notice. It may be noted that it is by now well settled law that raising a dispute as to standard rent for the first time in the written statement is of no consequence and would not in any way assist the tenant in taking the case out of the operation of section 12(3)(a) of the Bombay Rent Act.

13. It is, therefore, of no consequence as to whether or not the tenant had deposited the rent regularly in the court during the pendency of the suit.

13. In the premises aforesaid, the judgement and decree passed by the lower appellate court is eminently sustainable and does not justify any interference by way of the present revision. This revision is, therefore, dismissed. Rule is discharged with costs. Interim relief stands vacated.

ar